

EXHIBIT 3

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK
3 CAUSE NO. 1:20-cv-04160-JGK

4
5 HACHETTE BOOK GROUP, INC.,)
6 HARPERCOLLINS PUBLISHERS, LLC,)
7 JOHN WILEY & SONS, INC., AND)
8 PENGUIN RANDOM HOUSE, LLC,)
9)
10 Plaintiffs,)
11)
12)
13 - vs -)
14)
15 INTERNET ARCHIVE and DOES 1)
16 through 5, inclusive,)
17)
18 Defendants.)

19 ZOOM VIDEOTAPED
20 30(b)(6) DEPOSITION OF GINGER PATTON-SCHMITT
21 on behalf of
22 BETTER WORLD BOOKS

23 The deposition upon oral examination of GINGER
24 PATTON-SCHMITT, a witness produced and sworn before
25 me, Tracy Larimore, RPR, Notary Public in and for
 the County of Allen, State of Indiana, taken on
 behalf of the Plaintiffs, via Zoom, on the 6th day
 of December, 2021, scheduled to commence at 10:00
 a.m. pursuant to the Rule 30(b)(6) of the Federal
 Rules of Civil Procedure with written notice as to
 time and place thereof.

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1 the books?

2 MS. LUKACS: Objection to form.

3 A It's my understanding that those were the costs
4 associated with picking, packing, and shipping.

5 Q Okay. And do you know why Better World Books
6 would want to enter into such a Memorandum of,
7 of Understanding whereby donating books to
8 Internet Archive?

9 A This is our standard practice to memorialize a
10 donation relationship, not always in this exact
11 form, but typically with some type of agreement.

12 Q And does Better World Books have other donation
13 arrangements with, with other companies, other
14 than Internet Archive?

15 A Yes.

16 Q Can you tell me about those, please?

17 A Sure. Books for Africa is one that we have a
18 long-standing relationship. We have school
19 systems throughout the United States that we
20 have relationships with where we donate books.

21 During COVID, for example, there was a
22 school system, I believe in San Antonio, Texas.
23 And we make donations to prison ministries. We
24 make donations to battered women's shelters. We
25 work with, I think it's Barney's Book Barn, is

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1 what it's called, believe it or not, in Chicago.
2 But they're a not-for-profit that provide books
3 to students who go to schools with free lunches,
4 I believe. So we have a panoply of
5 relationships where we give and donate books.

6 Q And do any of the entities you just named pay
7 Better World Books for books?

8 A There are several entities that pay for the
9 picking, packing, and shipping. And there have
10 been instances, if I recall correctly, where an
11 entity, to whom we donate, might want to also
12 purchase from us.

13 And I, I don't remember specific details,
14 but an example would be if a benefactor gave
15 money to one of the charities we support to
16 purchase books. They might come to us and say,
17 "We'd like to purchase some additional books
18 from you-all." That has, that has happened in
19 the past.

20 Q And you, you mentioned that that has happened.
21 Is that a frequent occurrence? Can you remember
22 how many times that has happened?

23 MS. LUKACS: Objection to form.

24 A I cannot --

25 Q But in the majority --

1 whom we have a relationship.

2 Q Understood.

3 A So this is -- if, if you go on our website, for
4 example, there's a list of people that we donate
5 with. It's pretty standard for us to get
6 permission to say, "Hey, we do business with
7 you."

8 Q And, and why does Better World Books want to do
9 that?

10 MS. LUKACS: Objection to form.

11 A Part of our donation structure is that we get
12 donations from academic libraries and from
13 public libraries, and these libraries donate
14 books to us through their typical weeding
15 process, and they like to know where those books
16 go, and we like to be able to tell them.

17 Q All right. And is it your understanding that
18 providing them with that information will lead
19 to more donations of books?

20 MS. LUKACS: Objection to form.

21 A I, of course, don't know what they're thinking
22 or feeling, but I know that in the industry,
23 librarians tend to want to follow the bouncing
24 ball with their donation, to make sure that
25 books aren't ending up in landfills. So

1 whenever we can say, "You're donating to us.
2 We're going to sell what we can. We're going to
3 donate what we can, and then we're going to
4 recycle."

5 So they, they like more granularity in who
6 we might donate to. And that's why we're -- we
7 try to list those on our website and be able to
8 share that information when we can.

9 Q Understood.

10 MR. BROWNING: Carissa, could you pull up
11 Tab 002, please?

12 CONCIERGE: Okay. It's available.

13 (WHEREUPON, Exhibit Number 3, BWB_000289 -
14 90, was marked for identification.)

15 Q Ms. Patton-Schmitt, let me know when you have it
16 up in front of you.

17 A Will do. I have it.

18 Q Okay. This is a document Bates-stamped BWB
19 000289.

20 Ms. Patton-Schmitt, have you seen this
21 document before?

22 A I have.

23 Q Did you draft it?

24 A My recollection is that I edited it.

25 Q Okay. So you saw this document around January

1 the time of this document, but I can tell you
2 that generally speaking, Better World Books is
3 in a position to donate a book, if we can tell
4 from our analytics that we have more copies than
5 we're able to sell. And purchased books would
6 be those where we don't have more copies than
7 we're able to sell, and we could potentially
8 sell them at some price.

9 Q And tell me a little bit more about those
10 analytics. I mean, that sounds pretty
11 sophisticated, but can you just sort of explain
12 how, how -- again, at high-level terms how the
13 analytics --

14 A Sure.

15 Q -- worked at Better World Books?

16 A Sure. It's really not that complicated.
17 It's -- I think the word analytics to an English
18 major just sounds complicated, right, so we, by
19 tracking our inventory, can tell, over time, how
20 many copies of a book we're going to sell.
21 Let's call -- let's say Harry Potter and the
22 Sorcerer's Stone, right, we know how many copies
23 we get in, we know how many copies we typically
24 sell. We also know the condition of the books,
25 right?

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1 If anybody's bought a book online, a used
2 book, you see the condition. So we can look at
3 that and say, you know what? In the past ten
4 years, we've sold 100 copies a year of Harry
5 Potter and the Sorcerer's Stone that are very
6 good condition. We have 300, and they're all
7 fair. We can donate those.

8 Or we sell 100 a year. We only have 95.
9 They're all very good, we can sell these.
10 That's it, in a nutshell, from my perspective
11 and understanding.

12 Q Got it. But I mean, is that -- are those
13 analytics an important part of Better Worlds'
14 business and how it, how it does business?

15 MS. LUKACS: Objection to form.

16 A Yes. I mean, we, we have to look, all the time,
17 at books on our shelves, just like any retailer,
18 and we have to cull any book that we consider
19 obsolete. It's not going to sell, or we have
20 too many, because, for us, every spot where a
21 book is stored, is real estate, right?

22 And if we had it taken up by stale real
23 estate, that's a potential opportunity that
24 we're missing for a sale or for donation to, to
25 one of our literacy partners. So we look

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1 Q That, that's fair.

2 But do -- you mentioned before that Better
3 World Books donates to other -- a number of
4 other entities. Do any of these other entities
5 have a wish list?

6 A These other entities can give us absolutely
7 parameters. So for example, when we donated to
8 the school in San Antonio, they might ask us if
9 we have books for third graders that are
10 learning English, right? Or if we're donating
11 to a male prison, they might have very strict
12 guidelines of what kind of books are and are not
13 allowed in the prison. You know, you can't send
14 a prisoner a book about how to break out of
15 prison.

16 And so if we're donating to Books for
17 Africa, for example, if they started a high
18 school in an area, they might tell us, "We're
19 looking for chemistry books. We're looking for
20 biology books." So every -- not everybody, but
21 a lot of our donors -- I'm sorry, our donation
22 recipients, give us parameters, because the
23 men's prison doesn't want Richard Scarry books
24 and vice versus.

25 Q Got it. But it's my understanding, and correct

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1 me if I'm wrong, that the Internet Archive wish
2 list asks for specific books.

3 MS. LUKACS: Objection.

4 Q Are any of your other -- do any of your other
5 donation recipients provide you with wish lists
6 that asks for specific books?

7 A There have been donation recipients in the past
8 who have asked for specific titles, yes.

9 Q But is it fair to say that's uncommon?

10 MS. LUKACS: Objection to form.

11 A I would say it's, it's less frequent than
12 frequent. I don't -- it -- it's more than
13 uncommon, though --

14 Q Okay. So --

15 A -- you know what I mean?

16 Q -- so less, less than frequent, more than
17 uncommon?

18 A Correct. Yeah. Yeah. Somewhere in the sweet
19 spot there. I mean, it happens. It happens
20 regularly, so it doesn't surprise me when it
21 happens, but it doesn't happen often.

22 Q I, I understand that. But -- and correct me if
23 I'm wrong, but it is also my understanding that
24 Internet Archive sends you this wish list or a
25 wish list on a regular basis is that; is that

1 grocery store parking lot, and we lease a
2 parking space to put our drop box. And we have
3 agreements that, you know, we're not going to
4 let the box overflow and those kinds of things.

5 And we pay, you know, a fee to put the box
6 there. And then the individuals come and donate
7 their box -- their stuff into the boxes, and
8 then the landlord may say, "Hey, we want 10
9 percent of the sales from this box to go to our
10 local Red Cross," right?

11 Q Mm-hmm.

12 A And so we would, we would do that. So we have
13 lots of arrangements like that from our sources,
14 public libraries, academic libraries, drop box
15 landlords, where we give a portion of the
16 proceeds back --

17 Q Uh-huh.

18 A -- so, you know, we're not buying the books, but
19 we're, we're in a consignment relationship, if
20 you will, to a certain extent. And then -- not
21 a consignment. I'm sorry. A co-sale agreement.

22 Q Mm-hmm.

23 A And then we do purchase from thrift and
24 wholesale sometimes.

25 Q Got it. But you do also receive books for free

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1 with Morris, Manning & Martin, was the
2 representation for Better World Books, and we
3 spent, in earnest, from at least March of 2019
4 until July 3rd of 2019 negotiating the deal and
5 structuring the deal. And we closed on July
6 3rd, which allowed us to pay off our onerous
7 lenders, AT Media, which was actually AT Media
8 and Prudential. They were half and half
9 involved in it.

10 And at that juncture, Better World
11 Libraries purchased their equity for \$750,000
12 and opened Library of Richmond, paid off our
13 debt, and then took a promissory note from us
14 for the 16.5, and we were able to pay out all of
15 our shareholders and merge.

16 We had created a -- I think it was called
17 the Qumpus Merger Subsidiary, and we did a
18 merger. That was the best way to handle our
19 shareholder situation because of the structure
20 that we had in place was to merge.

21 And so now, we have a single shareholder,
22 which is Better World Libraries.

23 Q And Better World Libraries owns 100 percent of
24 Better World Books; is that right?

25 A Correct. Correct.

1 Q And what is Better World Libraries?

2 A It's a California charity, a 501(c) (3).

3 MR. BROWNING: And Carissa, could you
4 introduce Tab 4, please? Are we at Exhibit 4?
5 Sorry to lose count so early.

6 THE WITNESS: Yeah, I think it's Exhibit 4.
7 Tab 3, maybe, but it --

8 MR. BROWNING: Yeah, this is not -- I'm
9 realizing this isn't the, the most elegant
10 system, but we'll, we'll get through it.

11 (WHEREUPON, Exhibit Number 4, BWB_000255 -
12 57, was marked for identification.)

13 Q And if you're confused, you know, if at any
14 point I misspeak or I'm confusing about the
15 exhibits, let me know. Happy to clarify.

16 A Will do.

17 CONCIERGE: Exhibit 4 is now available.

18 Q Great. And let me know when you have that up in
19 front of you, Ms. Patton-Schmitt.

20 A And you can call me Ginger.

21 Q Oh, thank you. And we've already established --

22 A Well --

23 Q -- that you can call me Jack, right?

24 A Okay. You're right, 16.75. I misspoke earlier,
25 that's right, because it's 17.5 total, that's

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1 Network, and when it looked like this deal was
2 going to go through, it was decided to change
3 the name to Better World Libraries.

4 Q And what, if anything, are you aware of this
5 entity, now called Better World Libraries, doing
6 before the merger? What did it do before --

7 MS. LUKACS: Objection.

8 Q -- the merger, is a good question?

9 A I have no idea.

10 Q Do you know if it did anything?

11 MS. LUKACS: Objection to form.

12 A I don't know.

13 Q Do you know who controls Better World Libraries?

14 MS. LUKACS: Objection to form.

15 A I do know that Better World Libraries has a
16 board. I believe it's a three-member board as,
17 as we stand here today.

18 Q And, and do you recall who's on that board?

19 MS. LUKACS: Objection to form.

20 A Mekal [ph.] Hall, I believe is on the board, and
21 Jeff Ubois, and Brewster Kahle.

22 Q And we can take them each in turn, but who are
23 they, start-, starting with Mekal Hall?

24 A Mekal, I believe, has the title of a director
25 for Better World Libraries. And Jeff, I know,

1 serves a finance function for Better World
2 Libraries, but I'm not sure of either of their
3 specific titles.

4 Q Okay. And how about Brewster Kahle? Who is
5 Brewster Kahle?

6 A I know he's a director, but I don't know if he
7 has a title beyond that.

8 Q Okay. Is he affiliated with the Internet
9 Archive?

10 MS. LUKACS: Objection to form.

11 A It's my understanding that he's the digital
12 librarian for Internet Archive, yes.

13 Q Is it your understanding that Brewster Kahle
14 effectively controls Internet Archive?

15 MS. LUKACS: Objection to form.

16 MR. GRATZ: Objection to form.

17 MS. LUKACS: Yeah. And I'll just say for
18 the record, that this line of questioning is not
19 one of the topics noticed for the 30(b)(6)
20 deposition.

21 MR. BROWNING: That's fine.

22 Q I'm asking in your, your personal capacity what
23 you know about Brewster Kahle, given the
24 prominent role he, he plays for Internet Archive
25 and on the board of this company.

1 Q And Jeff Ubois and Mekal are also affiliated
2 with Internet Archive; is that your
3 understanding?

4 A I don't know, I don't know for sure if they're
5 affiliated with Internet Archive. I do know
6 that they're affiliated with Better World
7 Libraries.

8 Q Uh-huh. Do you have any reason to believe that
9 they are not affiliated with Internet Archive?

10 MS. LUKACS: Objection to form.

11 A Well, I deal with them. I deal with Mekal
12 directly, with her involvement with Better World
13 Libraries, because, as corporate secretary for
14 Qumpus, will know your client purposes for
15 banking relationships and whatnot, I have to get
16 corporate documents from her. So I only deal
17 with her in terms of Better World Libraries, and
18 she interfaces with Jeff and gets me what I
19 need. I don't have any interaction with Jeff or
20 Mekal with Internet Archive. I only deal with
21 them with Better World Libraries.

22 Q Got it. Okay. And taking you back to Exhibit
23 BWB 5, I just want to make sure I understand
24 what all of these Qumpus subsidiaries do.

25 A Yeah. Sure.

1 it if we were a disregarded entity, because that
2 means that their student loans would be
3 cancelable, and they're not.

4 And I actually just had to investigate that
5 for the second time for somebody so that's in --
6 last week, so that's in the forefront of my
7 mind. So, no, I don't think we're
8 not-for-profit. And I've worked for
9 not-for-profit, so no. We're a socially
10 conscious for-profit.

11 Q Thank you.

12 A Sure.

13 MR. BROWNING: Carissa, could you pull up
14 Tab 5 please? And I have -- I apologize in
15 advance for the confusion, but this is going to
16 become Exhibit 6.

17 (WHEREUPON, Exhibit Number 6, BWB_000294 -
18 96, was marked for identification.)

19 CONCIERGE: It's now available.

20 MR. BROWNING: Thank you.

21 Q Now, I'm hour-glassing, but I know what it's
22 going to be, so let me know when you see it,
23 because that's the important thing.

24 A I'm here.

25 Q Great. Do you recognize this document?

1 A I do.

2 Q What is it?

3 A It is the written consent of the sole

4 shareholder of Qumpus, Inc., and it was prepared

5 by Morris, Manning & Martin at, at the time or

6 immediately thereafter, following the merger.

7 Q And what is the resolution being consented to

8 here?

9 A Under Georgia law, we needed to show who our

10 directors, who our shareholders were, and this

11 was kind of a cleanup exercise, if you will,

12 showing who owns Qumpus, Inc., and who the board

13 members are going to be for Qumpus, Inc.

14 Q And so let's start with the board members. Are

15 the board members Brewster Kahle, Jim Michalko,

16 and Dustin Holland?

17 A Correct. And it's -- just for future reference,

18 it's Michalko.

19 Q Oh, thank you. That is easier.

20 A You're welcome.

21 Q And who is Jim Michalko?

22 A He formerly was with OCLC, I believe. He's a

23 well-respected venerated person in the library

24 community. And so he was brought onto our board

25 and it had been the process in the past that the

1 CEO of Better World Books was always one of the
2 board members, so we continued that through.

3 And then, it had always been the process at
4 Better World Books that those who were
5 shareholders were on the board. And so we used
6 to have a five-person board, because we had one
7 person that represented the common shares, and
8 one person that represented some other
9 investments, and then, you know, on and on. The
10 people that were invested, our shareholders.

11 And so now that we one shareholder, we have
12 a representative of our one shareholder, our
13 CEO, and then an outside person with the
14 knowledge of the book industry and library
15 industry.

16 Q Got it. And then you mentioned the shareholder,
17 the shareholder's Better World Libraries; right?

18 A Correct.

19 Q As the sole shareholder, is Better World
20 Libraries entitled to receive dividends or other
21 profits from Better World Books?

22 A I don't know if they're entitled to receive
23 dividends, but they have not, do not. That's
24 not anything we discuss. So entitled is I --
25 you know, is there a world in which they could?

1 understand that. So Better World Libraries --
2 Better World Books, excuse me, has a literacy
3 program whereby it donates large quantities of
4 books to certain organizations; is that --

5 A No. We have a general literacy fund where we
6 make grants and sometimes people would prefer
7 in-kind donations over the grant. So, like, for
8 example, giving Tuesday was just was past
9 Tuesday.

10 Q Right.

11 A So we have a list of people all over the United
12 States that got our grants. And I think they
13 ranged from, like, \$1,000 to \$5,000 --

14 Q Mm-hmm.

15 A -- maybe it was \$10,000 this year. I can't
16 remember. Things were odd with COVID. But --
17 so Open Library of Richmond received a literacy
18 grant, but they wanted in-kind donations, so we
19 would give them donations of books rather than X
20 number of dollars.

21 Q Got it. And so -- and that -- this is
22 postmerger we're talking about; right?

23 A Correct.

24 Q Okay. So one of the ways Open Library of
25 Richmond gets books is through literary -- or

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1 STATE OF INDIANA)
2) SS:
3 COUNTY OF ALLEN)

4 I, Tracy L. Larimore, a Registered
5 Professional Reporter and Notary Public in and for
6 the County of Allen, State of Indiana at large, do
7 hereby certify that GINGER PATTON-SCHMITT, the
8 deponent herein, was by me first duly sworn to tell
9 the truth, the whole truth, and nothing but the
truth in the aforementioned matter;

10 That the foregoing deposition was taken on
11 behalf of the Plaintiffs, via Zoom, on the 6th day
12 of December, 2021, commencing at the hour of 10:00
13 a.m., pursuant to the Rules;

14 That said deposition was taken down
15 stenographically and transcribed under my direction,
16 and that the typewritten transcript is a true record
17 of the testimony given by the said deponent; and
18 thereafter presented to said deponent for her
19 signature;

20 That the parties were represented by their
21 counsel as aforementioned.

22 I do further certify that I am a
23 disinterested person in this cause of action; that I
24 am not a relative or attorney of any party, or
25 otherwise interested in the event of this action,
and am not in the employ of the attorneys for any
party.

26 IN WITNESS WHEREOF, I have hereunto set my
27 hand and affixed my notarial seal this 8th day of
28 December, 2021.



29 Notary Public, State of Indiana
30 Commission No. 657233

31 My Commission Expires August 21, 2022